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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,373	03/12/2004	Chantal Amalric	0503-1116	7300

466 7590 01/11/2008  
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EXAMINER
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EGWIM, KELECHI CHIDI

ART UNIT	PAPER NUMBER
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1796

MAIL DATE	DELIVERY MODE
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01/11/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/799,373

Applicant(s)

AMALRIC ET AL.

Examiner

Dr. Kelechi C. Egwim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 27-40, 42 and 44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-40, 42 and 44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/ are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/19/2007 has been entered.
2. Due to amendments and persuasive arguments by applicant, the previous rejections of record based on Vesperini et al. have been overcome and are hereby withdrawn.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 27-40, 42 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Lahanas et al. or Kellner et al.

***Response to Arguments***

5. Applicant's arguments filed 10/19/2007 have been fully considered but they are not persuasive.

6. Regarding Lahanas et al., applicant argues that the reference "fails to disclose adding a fatty phase to a gelled aqueous phase". However, the teaching in Lahanas et al. to add the fatty phase, comprising the oil and the perfluoropolyether, to the water-in-silicon emulsion, comprising the gelled aqueous phase, still meets the requirements of the present claims.

Even though applicant has amended the preamble to recite that the process is intended to prepare a composition "consisting of" a fatty external phase and a gelled aqueous phase, the actual process steps in the claimed process still recite "comprising" and are open the additional steps, including possible removal of components in order to form the final product.

Thus, the requirements for rejection are still met.

7. Regarding the water-in-oil emulsion, when the oil/fatty phase is added, the composition formed in Lahanas et al. comprises a fatty external phase and a gelled aqueous internal phase.

Further, the newly added step of forming a water-in-oil emulsion "having" said fatty external phase and said gelled internal phase step, does not exclude the presence of other phases in the step.

Applicant is reminded that the independent claims are drawn to the process, not an intended product.

8. Regarding Kellner et al., again applicant argues that, while the reference discloses water-in-oil emulsions, the only exemplified embodiment is an oil-in-water emulsion. However, it is well settled that anticipatory teachings are not limited to any particular embodiment/example. In re Boe, 148 USPQ 507 (CCPA 1966). Disclosed examples and preferred embodiments (even if the embodiments tested by appellant were preferred) do not constitute a teaching away from a broader disclosure. In re Susi, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). The claimed process is still taught by Kellner et al., even if not exemplified.

9. Again, applicant is reminded that the claims are to a process, and not to "a composition comprising of a fatty external phase and a gelled aqueous internal phase". Regarding the ratio of the gelled aqueous phase to the fatty phase, in the abstract, Kellner et al. teaches 5-95% of the aqueous phase, based on the water and oil phase composition.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Kelechi C. Egwim whose telephone number is (571) 272-1099. The examiner can normally be reached on M-T (7:30-6:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCE

KELECHI C. EGWIM PH.D.  
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to be 'KE' followed by a stylized flourish.